

Terms and Conditions of Sale

1. APPLICATION OF TERMS AND CONDITIONS OF SALE

Guide Valve Limited (Canada) / Guide Valve USA Limited (aka GVL), is herein referred to as the “**Seller**” and the customer or person or entity purchasing goods or services (“**Goods**”) is referred as the “**Buyer**”.

These terms and conditions of purchase (“**Terms**”), shall apply to any quote, purchase order, order acknowledgment, invoice or any other documents drawings, specifications or instructions to place an order (“**Order**”, the Terms and Order together referred to as the “**Agreement**”), which is issued or accepted by either party for the purchase by Buyer of Goods from Seller, to the entire exclusion of all other terms and conditions. The Agreement represents the entire agreement between the Seller and Buyer with respect to the Goods. If there is a conflict or inconsistency between these Terms and any other part of an Order, these Terms shall prevail.

Terms or conditions contained in any prior, contemporaneous or subsequent communication from Seller or Buyer that submit, propose, or state any additions, changes, deviations, or modifications to this Order, shall automatically be deemed void, objected to, and rejected by Seller and Buyer. This Order is the final and complete expression of Order between the parties, setting forth the entire Order between the parties regarding transactions under this Order and including all promises and representations both express and implied. If this Order is construed to be an offer, this offer expressly limits acceptance by Buyer to the terms of this offer and notice of objection to any different or additional terms is hereby given. If this Order is construed to be an acceptance of an offer, this acceptance is expressly conditioned upon Buyer’s assent to any different or additional terms contained in this Order. If this Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties.

The Seller takes exception to and hereby objects to all hold harmless and indemnity provisions, either express or implied, set forth in Buyer’s order, including, but not limited to, those that attempt to make GVL responsible for Buyer’s negligence. The Seller also objects specifically to any provisions in Buyer’s order that (a) attempt to impose warranties other than as set out herein, (b) attempt to prohibit disclaimers of warranties, (c) attempt to preclude limitations on Buyer’s remedies, or (d) attempt to impose damages resulting from performance failures.

2. MODIFICATION

None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered, including by course of dealing, except by a written instrument specifically referencing the affected provision of this Order signed by an authorized representative of GVL and an authorized representative of Buyer. The failure or delay of either party in the enforcement of the rights detailed in the Order shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. Either such party may exercise its rights under the Order despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

3. PRICES

Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods shall remain in effect for thirty (30) days after the date of Seller’s quotation or acknowledgment of Buyer’s order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment of the Goods is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to Seller’s price for the Goods at the time of shipment. *All prices and licensee fees are exclusive of taxes, duties, transportation and insurance, which are to be borne by Buyer.* Rebates or refunds for distributor stock on hand cannot be allowed in case of price decline. *Seller will not accept orders for Goods to be shipped on a consignment or guaranteed sale basis, unless negotiated in an individual contract of consignment.*

4. TAXES

Any current or future tax, duties or governmental charge (or increase in same) affecting Seller’s costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer’s account and shall be added to the price.

5. TERMS OF PAYMENT

Unless otherwise specified in writing by Seller, terms are net thirty (30) days from date of Seller’s invoice in the currency indicated on the invoice. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate of 2% per month, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer’s financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller’s other rights and remedies, Seller may discontinue deliveries and retain ownership title for the goods.

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6. DESIGNS

All designs and specifications shown in Sellers's catalogs are subject to change without notice.

7. SHIPMENT AND DELIVERY

While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other information required by Seller. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Goods are shipped, at Buyer's risk and expense, FOB Seller's facility unless otherwise agreed to by Buyer and Seller. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

8. WEIGHTS AND DIMENSIONS

Shipping weights and dimensions given in Seller's catalog are as close to actual as practicable, but are not guaranteed. No claims will be allowed because of any discrepancy between actual weights or dimensions shipped and listed data.

9. LIMITED WARRANTY

Subject to the limitations of Section 10, Seller warrants that the Goods manufactured by Seller will be free from defects in material and workmanship and meet Seller's published specifications at the time of shipment under normal use and regular service and maintenance for a period of twelve (12) months from the date of installation or eighteen (18) months from the date of shipment of the Goods by Seller, unless otherwise specified by Seller in writing. Goods purchased by Seller from a third party for resale to Buyer shall carry only the warranty offered by the original manufacturer.

THE WARRANTIES SET FORTH IN THIS SECTION 9 AND THE WARRANTY SET FORTH IN SECTION 12 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT THE GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.

These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Buyer shall inspect Goods delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within 30 days after receipt of such Goods shall be an unqualified acceptance of such Goods. If within thirty (30) days after Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer's exclusive remedy, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for, that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. All costs of dismantling, reinstallation and freight and the time and expense of Seller's personnel and representatives for site travel and diagnosis under these warranties shall be borne by Buyer unless accepted in writing by Seller. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranties for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

Section 9 applies to any entity or person who may buy, acquire or use the Goods, including any entity or person who obtains the Goods from Buyer, and shall be bound by the limitations therein, including Section 10, Buyer agrees to provide such subsequent transferee conspicuous, written notice of the provisions of Sections 9 and 10.

10. LIMITATION OF REMEDY AND LIABILITY

THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 12) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 9.

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT,

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NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

The term "**consequential damages**" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocates the risk between Seller and Buyer and form a basis of this bargain between the parties.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

11. RETURNED GOODS

Except as otherwise provided with respect to warranty defects in Section 9, advanced written permission to return Goods must be obtained from Seller's Service Department. Such Goods must be current, unused, catalogued Goods and must be shipped; transportation prepaid, to GVL Canada Receiving Department, at the address specified by the Seller. Returns made without proper written permission will not be accepted by Seller. Credit or exchange for such returned Goods will be at the billing price or current price, whichever is lower, from which will be deducted an inspection and repacking charge and the cost of any reconditioning. Seller reserves the right to inspect Goods prior to authorizing return.

12. PATENTS AND COPYRIGHTS

Subject to the limitations of the second paragraph of Section 10, Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperates fully with Seller and permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions (i) of such Goods, or (ii) of any combination of Goods acquired from Seller in a system designed by Seller. In the event such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability.

13. EXCUSE OF PERFORMANCE

Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

14. CANCELLATION

Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.

15. CHANGES

Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees and dates of delivery. Seller reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to

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Goods being made to order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.

16. NUCLEAR/MEDICAL

GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

17. INSPECTION AND INSTALLATION

Buyer shall be responsible for receiving, inspecting, testing, storing, installing, starting up and maintaining all Goods.

18. DRAWINGS

Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefore.

19. DOCUMENTATION

Seller shall provide Buyer with data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

20. EXPORT/IMPORT

Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of Canada, the United States, and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods and Services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.

21. ASSIGNMENT

Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

22. GENERAL PROVISIONS

This agreement supersedes all other communications, negotiations and prior oral or written statements regarding the subject matter of this agreement. No change, modification, rescission, discharge, abandonment, or waiver of this agreement shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario. Buyer and Seller irrevocably attorn to the jurisdiction of the courts of Ontario in Toronto, which will have non-exclusive jurisdiction over any matter arising out of this agreement. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement. It is the express wish of the parties that this agreement and any related documentation be drawn up in English. *Il est de la volonté expresse des parties que cette convention ainsi que tout document connexe soient rédigés en langue anglaise.*